

# Exhibit 91

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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

No. 2:18cv530

CSX TRANSPORTATION, INC.,  
individually and on behalf  
of NORFOLK & PORTSMOUTH BELT  
LINE RAILROAD COMPANY,

Plaintiff,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,  
et al.,

Defendants.

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Remote Proceedings

January 13, 2021

9:38 a.m. - 6:40 p.m.

VIDEO DEPOSITION OF ROBERT GIRARDOT  
(via Teleconference)

Taken before SUZANNE VITALE, R.P.R., F.P.R.  
and Notary Public for the State of Florida at Large,  
pursuant to Notice of Taking Deposition filed in the  
above cause.

Job No. CS4395739

1 believe it would also include -- there is a per-car  
2 trackage rights fee that NPBL has to pay to  
3 Norfolk Southern. And so that would be included in  
4 that cost because that would be -- so those would be  
5 the two incremental costs.

6 And, again, these are estimates. I think  
7 they're good estimates.

8 Q. In setting a rate, CSXT considers its own  
9 costs in delivering the service, right?

10 A. We -- on this particular one, we would  
11 consider what it costs us to do business with the  
12 NPBL, yes.

13 Q. I'm speaking more generally.

14 As a general matter, in setting a rate,  
15 CSXT would consider its own costs in delivering a  
16 service, right?

17 A. That's one consideration, yes.

18 Q. So would you agree, then, setting a rate,  
19 the railroad should consider its variable costs in  
20 setting that rate?

21 MR. HATCH: Objection, calls for opinion,  
22 and vague.

23 THE WITNESS: I think -- you know, I just  
24 said one of the things we would consider would  
25 be costs. And, you know, one component of cost

1 is variable cost.

2 BY MR. WINGFIELD:

3 Q. Given the objection, let's go through it a  
4 little bit.

5 So you have an MBA, right?

6 A. I don't understand.

7 Q. You have a degree, master's of business  
8 administration from a significant school, correct?

9 A. I have an MBA, yes.

10 Q. And as part of obtaining the MBA, you  
11 would have studied costs, right?

12 A. Yes. Yes, I did.

13 Q. And in your history as an employee of  
14 CSXT, you've been involved extensively in examining  
15 costs as they affect rates, right?

16 A. You know -- I mean, rates are determined  
17 by the market, right? So when you determine  
18 whether, you know, you could make money or not, you  
19 compare the market, which is the rate, to what your  
20 costs are.

21 Q. All right. In the world of costs, you  
22 just testified that it's appropriate to look at  
23 variable costs involving delivering a service.

24 What about fixed costs, is it appropriate  
25 to look at your fixed costs in determining what a

1 rate should be for service?

2 A. In some cases, it is. Other cases, it's  
3 not.

4 Q. Isn't it true that a company's fixed costs  
5 are real costs, and if they're not covered in the  
6 long run, that the company won't make money and  
7 could fail, right?

8 MR. HATCH: I'm going to object that it  
9 calls for an opinion.

10 And, you know, it would be helpful --  
11 these are generalized questions. I'm not sure  
12 which of the topics that they relate to.

13 Alan, if you've got a particular one you  
14 think it relates to, I'd welcome the  
15 identification.

16 MR. WINGFIELD: Okay. This examination  
17 relates to topic number 8 in the deposition  
18 notice, which relates to the 2018 service  
19 proposal and the considerations weighed in  
20 formulating the proposal.

21 So now he's testified that NPBL's costs  
22 were weighed in consideration of formulating  
23 the proposal, so I want to explore this topic.

24 MR. HATCH: I think, respectfully, you can  
25 ask him what, from your topic, considerations

1 CSX took into account in formulating the 2018  
2 proposal.

3 But these are hypothetical, general  
4 questions about how businesses operate. And I  
5 don't think they're tied to that.

6 So if you can tie it to that, Alan, I  
7 think that would be helpful.

8 BY MR. WINGFIELD:

9 Q. Mr. Girardot, did CSX include, as a  
10 calculation of the \$780,000 incremental cost number  
11 and the \$660,000 incremental operating income  
12 number, consideration of NPBL's fixed costs?

13 A. You'd have to get more specific on fixed  
14 costs. I mean, there's some -- tell me which fixed  
15 costs, and then I can --

16 Q. How about depreciation of assets?

17 A. I don't -- well, I don't think that that's  
18 one that we would have looked at because this  
19 business wouldn't have changed any of their  
20 depreciation schedules.

21 Q. NPBL owns tracks, correct?

22 A. That's correct.

23 Q. And NPBL owns locomotives -- excuse me --  
24 strike that.

25 NPBL owns certain ancillary equipment to

1 be used for conducting its business, right?

2 A. That's correct.

3 Q. And it has ancillary buildings and office  
4 space that it maintains for conducting its business,  
5 right?

6 A. Yeah, that's correct. But we didn't see  
7 that how us running a train out to NIT would cause  
8 them to increase or decrease those items that you  
9 just mentioned.

10 Q. If there's no money in your proposal to  
11 cover these fixed costs, then where is the money  
12 supposed to come from to operate NPBL's business, to  
13 cover these fixed costs in the long run?

14 A. Well, first of all, there was going to be  
15 \$660,000 left over of this that they could  
16 contribute towards having it -- you know, up until  
17 this point, Mr. Wingfield, is -- fixed costs was  
18 being covered by the current level of business that  
19 they handled, all right? So we were bringing  
20 incremental business, as we state here.

21 So all of that fixed cost was already  
22 being covered. So this new business would actually  
23 give them more coverage of those existing fixed  
24 costs.

25 Q. So your suggestion is that the \$660,000

1 incremental operating income could, in part, be used  
2 to cover NPBL's fixed costs?

3 A. That's really an accounting question on  
4 how they decide to treat that incremental revenue.

5 Q. Would it have been fair for NPBL to  
6 consider its fixed costs in assessing the 2018 rate  
7 proposal?

8 MR. HATCH: Objection, calls for opinion  
9 and vague.

10 THE WITNESS: I was going to say I don't  
11 know what "fair" means, but I think -- I'll try  
12 and answer specifically.

13 Would it be a good business decision for  
14 them to -- it would only be a good business  
15 decision for them to consider any incremental  
16 fixed costs that this operation might generate.

17 BY MR. WINGFIELD:

18 Q. And that's because, in your view, its  
19 existing business would already be generating money  
20 to cover its fixed costs?

21 A. Well, I mean, the day before we made this  
22 proposal -- is all of NPBL's fixed costs was being  
23 covered by the existing business, and we didn't see  
24 any significant new fixed costs that this would  
25 generate. And so this would be -- this would be



1 incremental operating income, as we state there.

2 How you account -- you know, how an  
3 accountant would classify that is something I can't  
4 answer.

5 Q. Is it true that a railroad that owns a  
6 track using ties would have a regular maintenance  
7 program to repair and replace the ties?

8 MR. HATCH: I'm going to object again. I  
9 mean, this is a generic hypothetical question.  
10 I don't think it's covered by any of the  
11 topics.

12 MR. WINGFIELD: Let's focus on NPBL.

13 BY MR. WINGFIELD:

14 Q. NPBL owns track with ties, right?

15 A. Yes.

16 Q. And you would expect NPBL to have a  
17 regular maintenance program to repair and replace  
18 the ties on a regular, reasonable schedule?

19 Wouldn't you expect that?

20 A. Well, it depends on how you define, you  
21 know, "a reasonable schedule."

22 I mean, like, I mean, can you be more  
23 specific?

24 Q. Well, just as a general proposition, based  
25 on your knowledge of how railroads operate, wouldn't

1                   Were you personally -- are you personally  
2                   privy to any of those conversations, if any, that  
3                   occurred between NPBL and any of its customers,  
4                   shippers, others who pay you money about its rates?

5                   A.     Are you asking me in my personal capacity  
6                   or my capacity as the CSX representative?

7                   Q.     Well, I'll ask you first in your personal  
8                   capacity.

9                   A.     No, I'm not aware of it because in my  
10                  personal capacity, I deal with the intermodal  
11                  traffic, international intermodal traffic.

12                  Q.     Is your answer different in your capacity  
13                  as CSX representative?

14                  A.     Yes.

15                  Q.     So what do you know about NPBL's  
16                  communications with customers other than CSX,  
17                  shippers, customers, however you want to phrase it,  
18                  people paying money for services, about NPBL's  
19                  rates?

20                  A.     Well, I mean, I think the thing that  
21                  sticks out is the biggest carload customer on NPBL  
22                  is -- is it Perdue? It's a grain customer.

23                  Q.     I believe it's Perdue.

24                  A.     In the process of preparing for this, I  
25                  saw some NPBL communications about the terms of

1 service at Perdue where they were asking for  
2 improved economies.

3 Q. As experienced railroad executives,  
4 Mr. Girardot, wouldn't you think it would be likely  
5 that Perdue would come to NPBL and ask to get the  
6 same rate that CSX was getting?

7 A. No, not at all.

8 MR. HATCH: That is both hypothetical and  
9 unless you correct me, well outside any of the  
10 30(b)(6) categories. So I'd object on those  
11 grounds.

12 THE WITNESS: Would you like me to answer  
13 that?

14 MR. HATCH: If you can.

15 THE WITNESS: Yeah. I think Perdue  
16 knows -- because they use tariffs on other  
17 shortline railroads, so they have different  
18 rates for intermodal traffic and carload  
19 traffic. Perdue does business in all kinds of  
20 places.

21 And so they know that that's apples and  
22 oranges. So that would not create an  
23 expectation with them to ask for lower rates.

24 BY MR. WINGFIELD:

25 Q. Is it your testimony, on behalf of CSXT,

1       that NPBL faced near-zero risk, that if NPBL gave  
2       CSXT a lower rate, that would result in  
3       cannibalization of revenues from existing customers?

4               MR. HATCH: Objection, hypothetical.

5               THE WITNESS: Yeah, well, there are no  
6       existing intermodal customers on the NPBL, so a  
7       specific term for intermodal traffic --

8               (Reporter clarification.)

9               THE WITNESS: The question is zero risk,  
10      you know, and, you know, the term I used was  
11      "near-zero risk." There's nothing in this  
12      world that's zero risk.

13              Being that they're entirely different  
14      commodities and being that NPBL has no other  
15      intermodal customers other than -- no other  
16      potential intermodal customers other than CSX,  
17      there's near-zero risk.

18              And I might add that the operating  
19      agreement requires that the rate be uniform,  
20      but it doesn't require that it be put in the  
21      tariff. You don't have to worry if it's  
22      visible for other customers, non-owner  
23      customers.

24      BY MR. WINGFIELD:

25              Q.     Going back to the 2018 rate proposal,